



Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

ORIGINAL

In the Matter of)
)
Distribution of 2004, 2005, 2006,)
2007, 2008 and 2009 Cable)
Royalty Funds)

Docket No. 2012-6 CRB CD 2004-
2009 (Phase II)

RECORDED

OCT 22 2016 USPS

In the Matter of)
)
Distribution of 1999-2009 Satellite)
Royalty Funds)

Docket No. 2012-7 CRB SD 1999-
2009 (Phase II)

**INDEPENDENT PRODUCERS GROUP'S OPPOSITION TO SETTLING
DEVOTIONAL CLAIMANTS' MOTION TO COMPEL INDEPENDENT
PRODUCERS GROUP TO PRODUCE DOCUMENTS**

Worldwide Subsidy Group LLC (a Texas limited liability company) dba
Independent Producers Group ("IPG") hereby submits its "Opposition to Settling
Devotional Claimants' Motion to Compel Independent Producers Group to
Produce Documents".

By this motion, the Settling Devotional Claimants ("the SDC") seek to
invade confidential privileged communications between IPG, its counsel, its
consultants, and its expert herein, Dr. Charles Cowan, based upon the SDC's
trumped up claim of "extraordinary, unique circumstances", the entire sum and

UNDERSIZED DOCUMENTS

AB did...

- ☒ Docketed (all cases)
- ☒ Store on shared drive
- ☒ Distributed to all
- ☐ Emailed
- ☐ Outlook Updated
- ☐ Service List Updated

substance of which are that Dr. Cowan changed his conclusions (see Moving Papers, page 4) and did not save interim data created and discarded as Dr. Cowan made his corrections. (see Moving Papers page 5).

Simply put, those are not “extraordinary, unique circumstances”, and they have been completely explained and disclosed to the SDC; to wit, Dr. Cowan made a mistake in his calculations and has corrected it, in the course of which he has submitted three sworn declarations to the Judges explaining his conduct (see Exhibit s A, B, and C, attached hereto), in addition to an informal statement provided to counsel for the SDC (see Exhibit B to the Moving Papers), and an explanation by IPG’s counsel in emails to counsel to the SDC (see Exhibit C to the moving papers). That information makes it perfectly clear what Dr. Cowan did and why, leaving no reason to subject IPG to the extraordinary sanction of having to disclose privileged communications.

The SDC also claim that communications including Raul Galaz are not privileged because IPG has produced no consultant agreement between it and Mr. Galaz. That argument is but another in a string of overreaching gambits pursued by the SDC. Obviously, there is no legal requirement that Mr. Galaz have a *written* consultant agreement with IPG to be an IPG consultant. As has been stated in written and oral testimony several times, Mr. Galaz is a consultant to IPG, albeit

one pursuant to an oral, not written, contract. See the Declaration of Denise Vernon attached hereto as Exhibit D.

A. NO “EXTRAORDINARY, UNIQUE CIRCUMSTANCES” EXIST UPON WHICH IPG’S PRIVILEGED COMMUNICATIONS SHOULD BE SUBJECT TO DISCOVERY.

As the SDC itself acknowledges, the communications it seeks by this motion between IPG, its counsel and its expert, Dr. Cowan, are privileged and protected by the work product rule (see the Moving Papers, pages 3 and 5).

As such, the only grounds for compelling IPG to reveal such communications is if the SDC demonstrate “a substantial need for the materials to prepare its case” (F.R.C.P. 26(b)(3)(A), to the extent that “non-disclosure will impair the truth-seeking function of discovery.” *F.T.C. v. Boehringer Ingelheim Pharm.*, 778 F. 3d 142, 155 (D.C. Cir. 2015). Moreover, as set forth in the *Boehringer* decision itself, what may be obtained are “facts”, whereas obtaining “opinions” requires a substantially greater showing. *Id.* at 153.

Here, as stated, Dr. Cowan revised his calculations, and has explained how and why in three sworn declarations and an informal statement, thoroughly explaining his process of calculations. Nothing demonstrates that more than the fact that the SDC’s own expert, Dr. Erdem, has issued his own declarations specifically taking issue with whether or not Dr. Cowan’s revisions constituted a “methodological” change. See Ex, B, para. 9. Under the circumstances, the SDC

has no “extraordinary” need for the communications between Dr. Cowan, counsel and IPG regarding the changes Dr. Cowan made, when it already has the “facts” as to what the changes were made and why. Indeed, courts have refused to force the production of such information in similar circumstances. *See Guilford Nat’l Bank v. Southern Ry.*, 297F. 2d 921, 923-27 (4th Cir. 1962) (no “special circumstances” found where the opposing party already possessed substantially similar materials).

Here, in his declarations Dr. Cowan has explained why he changed his calculations (see Ex. A, para. 9 (“IPG’s counsel immediately inquired about the produced results, and during the course of the next week I discovered errors . . . which required remedy”), Ex. B, para. 11, and Ex. C, para. 4). He has also explained how he changed his calculations (see Ex. A, paras. 6 and 7, Ex. B, paras. 6 and 7, and Ex. C, paras. 5, 6, 14 and 16). He has also explained that he made these revisions without knowledge that the SDC had filed a motion based on his initial mistaken calculations (see Ex. B, para. 11, and Ex. C, para. 18). Finally, he explained in his informal statement, and does so again in a declaration attached hereto as Exhibit E, that Tables 2 and 4 to his amended report were incorrect due to his error. He also confirms within his declarations that all of his electronic databases for his original and amended reports has been produced in discovery.

The SDC make several comments regarding the issue as to whether or not Dr. Cowan’s amended calculations constitute a change in methodology, implying

that IPG and Dr. Cowan are somehow acting improperly by not affirmatively acknowledging that the amended calculations reflect a changed methodology. However, as Dr. Cowan made clear in his declarations filed in opposition to motions to strike filed by the SDC and Motion Picture Association of America ("MPAA") (i.e., Exhibits A and B hereto), Dr. Cowan has a good faith professional basis upon which he contends that no methodological change was made. While recognizing that in ruling on those motions the Judges concluded that without more information they must conclude that a methodological change existed, that does not mean that Dr. Cowan's belief was specious or in bad faith. Moreover, in the Declaration filed in Support of IPG's Motion to Amend its Direct Statement (Exhibit C hereto), Dr. Cowan makes a more detailed explanation as to why the change in his calculations was not a "change in method". See Ex. C, paras. 6 through 14.

With regard to interim calculations by Dr. Cowan from which he did not save as particular files or databases, as with any such calculations they reflect trials and errors no one has any reason to save along the way because they are incomplete and unfinished. In addition, they are not relied upon by Dr. Cowan or IPG to produce IPG's Direct Statement, rather, the final calculations are what is relied upon. Moreover, how an invasion of privileged communications between Dr. Cowan and others will address the lack of some interim calculation databases

remains wholly unexplained by the SDC other than its conclusory statement that it is needed "so that they and the Judges can fully understand the true reasons for Dr. Cowan's changes." In fact, neither the SDC nor the MPAA have ever provided similar materials in discovery, and if the Judges were to now expand the scope of discovery to require the production of interim calculations that were not relied on, none of the participants herein would be deemed to have complied with their discovery obligations. According to the SDC's extended logic, otherwise privileged communications would exist for no participant. Yes, it is true that such interim "databases" do not exist, but, as stated, that is because they are not relied upon by IPG, and IPG cannot produce what does not exist.

Finally, it should also be remembered that communications between IPG's counsel and IPG and Dr. Cowan are obviously also protected by the attorney-client privilege. The SDC's requests are not narrowly tailored to address communications regarding Dr. Cowan's reports and calculations, but broadly seek any and all communications between IPG, Dr. Cowan, and IPG's former expert witness, Laura Robinson and her consulting firm. Thus, at a very minimum, the SDC's motion should not be granted as the information it seeks is far beyond the scope of Dr. Cowan's revised calculations.

The SDC also engage in a little character assassination, stating that counsel for IPG "feigned ignorance" as to the SDC's desire to see files of Dr. Cowan's

interim calculations, and that IPG was “less than candid about Dr. Cowan’s methodological changes”. That is just incendiary nonsense.

First, IPG’s counsel’s did not engage in “feigned ignorance”. Review of the email discourse between IPG and SDC counsel (see Exhibit C to Moving Papers) reveals the everyday exaggerations of SDC counsel that were made following IPG’s *first* communication revealing Dr. Cowan’s error with two tables (“Why do I have to keep asking for this?”; “This is my fourth and final time requesting this information.”), and the immediately accusatory statements of SDC counsel (“And frankly, I do not believe you . . . like I do not believe Dr. Cowan . . .”). IPG’s counsel truly did not understand that the SDC were seeking electronic files that had not been relied on (and did not exist) and, regardless, immediately inquired from Dr. Cowan as to the existence of the information sought and determined it no longer existed (see Exhibit C email string at 2:29 PDT and response at 3:38 PDT).

Second, IPG was not “less than candid about Dr. Cowan’s methodological changes”; rather, IPG did not believe there were any “methodological changes” because Dr. Cowan did not believe he had made any “methodological changes”, and still does not. There is a good faith dispute as to that issue, and the Judge’s have not yet considered (or at least ruled on) Dr. Cowan’s additional analysis on the issue as presented with the Motion for Leave to Amend IPG’s Direct Statement. Regardless, IPG and Dr. Cowan have been candid, making it very clear

what changes Dr. Cowan made in documents filed with the CRB on September 12, 2016, September 19, 2016, and October 17, 2016 (i.e., Exhibits A, B and C hereto).

B. COMMUNICATIONS WITH RAUL GALAZ ARE PRIVILEGED.

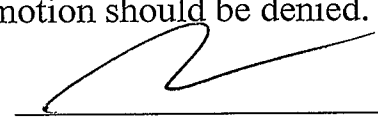
Never wanting to miss an opportunity to take a pot shot at Mr. Galaz, the SDC make the legally specious argument that communications with Mr. Galaz are not privileged because Mr. Galaz has not proffered a *written* consultant agreement with IPG.

Of course, the SDC cite to no authority whatsoever that IPG must produce a *written* "consulting agreement" as a requirement for Mr. Galaz being deemed a consultant to IPG, and none exists. Regardless, the Declaration of Denise Vernon attached hereto puts any doubt to rest about the status of Mr. Galaz.

CONCLUSION

For the reasons set forth herein, the SDC's motion should be denied.

DATED: October 21, 2016

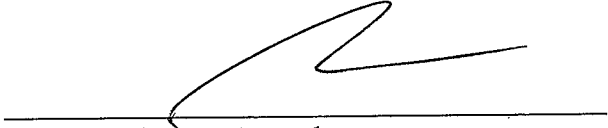


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Attorneys for Independent Producers
Group

CERTIFICATE OF SERVICE

I hereby certify that on this 24 day of October, 2016, a copy of the foregoing was sent by electronic mail to the parties listed on the attached Service List.



Brian D. Boydston

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SETTLING DEVOTIONAL CLAIMANTS:

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P.O. Box 57197
Washington, D.C. 20036-9997

EXHIBIT A

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of 2004, 2005, 2006, 2007,	)	Docket No. 2012-6 CRB CD 2004-2009
2008 and 2009 Cable Royalty Funds	)	(Phase II) (REMAND)
)	

In the Matter of)	
)	
Distribution of 1999-2009 Satellite	)	Docket No. 2012-7 CRB SD 1999-2009
Royalty Funds	)	(Phase II) (REMAND)
)	

DECLARATION OF DR. CHARLES COWAN

I, CHARLES COWAN, swear under penalty of perjury, that the following is true and correct:

1. I am over twenty-one years of age, am of sound mind and suffer from no legal disabilities. I am fully competent to testify to the matters set forth in this declaration. I have personal knowledge of all the facts stated herein and am in all respects qualified to assert the same. The contents of this declaration are true and correct.

2. In the Motion to Strike, the Motion Picture Association of America ("MPAA") asserts that:

"The IPG ADS also includes an "amended" version of Dr. Cowan's expert report that presents modified allocation formulas (see IPG ADS at 8); completely new allocation results reported in Tables 1-4 applying these modified formulas (see IPG ADS at 9-10); radically different "alternative" allocation results in Tables 5-6 (see IPG ADS at 11-12); and brand new "alternative" allocation results in Tables 7-8—two tables that were not even present in IPG's August 22, 2016 written direct statement (see IPG ADS at 12)."

* * *

"[T]he IPG ADS goes well beyond a correction, and presents new methodologies and allocation share proposals that were not included in IPG's August 22, 2016 written direct statement."

3. The MPAA's conclusion is incorrect - what I submitted was not a "new methodology", and the revised allocation share proposals are the results of a correction to the data made in the one week between the initial submission and the subsequent submission.

4. The methodology I used was well explained in the first submission, dated August 22. It is a methodology that has never been presented to the court, yet which directly responds to the court's desire to base the allocations on the marginal value of programs. This methodology is a standard application of regression theory, where the coefficients of variables included in the regression are interpreted as the hedonic marginal values of programs offered by each of the parties in this proceeding.

5. The regression method I used in the later calculations is exactly the same. The variables I used are exactly the same. Subscriptions on the left hand side of the equation, the number of programs offered by each of the parties on the right hand side, plus controls for time in years and for the stations offering the programs.

6. As I noted in the appendix to my report, the coefficients in the regression now become the percentage change in subscriptions due to a unit change in the number of programs offered by a party in the proceeding. This is an application of regression in econometrics that has been in use since the middle of the last century - for over 50 years. Accordingly, since the regression method being used, the variables being used, and the data sources being used are exactly the same, the assertion that different discovery requests are required is misleading to the court, and discovery relating to the methodology would be unchanged under either submission.

7. The MPAA falsely makes the claim in the motion to strike that "IPG did not include its actual methodology and share allocations in its original written direct statement filed on August 22, 2016, and instead appears to have saved them for the IPG ADS." This is also incorrect and grossly overreaches. The text of the two submissions, dated August 22 and August 30, are identical in terms of explaining that a regression was being used, the variables included in the regression, and the interpretation of the coefficients. The changes between the two texts are nominal, remedy typographical errors, and add a sentence in Appendix 2 that is an inconsequential observation about the regression formula.

8. The August 22nd submission included all the descriptions, mathematics, and rationale that was needed by any party to interpret what was being done, and discovery on the initial and subsequent submission would be form wise and substantively identical. Stating that the submitted methodology "was saved for the IPG ADS" is simply incorrect - an overstatement that can be readily evaluated by the court by simply holding up and comparing the two texts.

9. The more relevant question is why were there changes to the allocations and the data. The answer is simple - after preparation of the August 22nd report, IPG's counsel immediately inquired about the produced results, and during the course of the next week I discovered errors in the earlier processing of the data. Consequently, in the tabulations and analyses I performed for the August 22nd report, inconsistencies existed that called into question the produced results, which required remedy.

I hereby declare under the penalty of perjury that the foregoing is true and correct.

DATED: September 9, 2016

By: _____



Dr. Charles Cowan

EXHIBIT B

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of 2004, 2005, 2006, 2007,	)	Docket No. 2012-6 CRB CD 2004-2009
2008 and 2009 Cable Royalty Funds	)	(Phase II) (REMAND)
)	
In the Matter of)	
)	
Distribution of 1999-2009 Satellite	)	Docket No. 2012-7 CRB SD 1999-2009
Royalty Funds	)	(Phase II) (REMAND)
)	

DECLARATION OF DR. CHARLES COWAN

I, CHARLES COWAN, swear under penalty of perjury, that the following is true and correct:

1. I am over twenty-one years of age, am of sound mind and suffer from no legal disabilities. I am fully competent to testify to the matters set forth in this declaration. I have personal knowledge of all the facts stated herein and am in all respects qualified to assert the same. The contents of this declaration are true and correct.

2. In the Motion to Strike, the Settling Devotional Claimants ("SDC") assert that in my amended report, I submit a new methodology.

3. The SDC's conclusion is incorrect - what I submitted was not a "new methodology", and the revised allocation share proposals are the results of a correction to the data made in the one week between the initial submission and the subsequent submission.

4. The methodology I used was well explained in the first submission, dated August 22. It is a methodology that has never been presented to the court, yet which directly responds to

the court's desire to base the allocations on the marginal value of programs. This methodology is a standard application of regression theory, where the coefficients of variables included in the regression are interpreted as the hedonic marginal values of programs offered by each of the parties in this proceeding.

5. The regression method I used in the later calculations is exactly the same. The variables I used are exactly the same. Subscriptions are on the left hand side of the equation, while the number of programs offered by each of the parties on the right hand side, plus controls for time in years and for the stations offering the programs.

6. As I noted in the appendix to my report, the coefficients in the regression are the percentage change in subscriptions due to a unit change in the number of programs offered by a party in the proceeding. This is an application of regression in econometrics that has been in use since the middle of the last century - for over 50 years. Accordingly, since the regression method being used, the variables being used, and the data sources being used are exactly the same, the assertion that different discovery requests are required is misleading to the court, and discovery relating to the methodology would be unchanged under either submission.

7. The text of the two submissions, dated August 22 and August 30, are identical in terms of explaining that a regression was being used, the same variables included in the regression, and the interpretation of the coefficients. The changes between the two texts are nominal, remedy typographical errors, and add a sentence in Appendix 2 that is an inconsequential observation about the regression formula.

8. The August 22nd submission included all the descriptions, mathematics, and rationale that was needed by any party to interpret what was being done, and discovery on the initial and subsequent submission would be form wise and substantively identical. The identical

nature of the submitted methodology can be readily evaluated by the court by simply holding up and comparing the two texts.

9. Dr. Erdem acknowledges this in his declaration. In paragraph 4 of his declaration he demonstrates that the two equations are identical, except for a change in the *scaling* of the dependent variable "Subscribers" that results from the use of a logarithm. Dr. Erdem is correct that the revised formula reflects a revision to the *scale* of the same variable expressed in the originally expressed formula, however that is *not* a methodological change. Rather, scaling merely reflects how the data is viewed by the regression, i.e., how the data is counted then applied - - in absolute terms or in proportional terms. Moreover, this concept of scaling, which in no way involves a methodological change, is not a recent concept, and is even described in a 1938 reference book regarding the use of mathematics in economics. For example, see Allen, R.G.D. Mathematical Analysis for Economists, St. Martin's Press, New York, 1938, pages 219-220:

"equal distances between points on a natural scale indicate equal absolute changes in the variables, and equal distances between points on a logarithmic scale indicate equal proportional changes in the variable".

I chose this particular reference because it dates back to 1938 when this book was first published; the scaling of a variable is well-known to economists, it is not a change in methodology despite the claim of Dr. Erdem, and Dr. Erdem undercuts his own claim by presenting two identical forms of the regression in his report, where all variables are identical, the regression methodology is identical, and the predictor variables are unchanged.

10. Finally, Dr. Erdem would have to agree that the functional form of a variable included in the analysis is dictated by the data being analyzed. With a correction to the data that drove the resubmission of the report, Dr. Erdem would be complaining that I did not consider the

distribution of the corrected data being analyzed. In short, Dr. Erdem would like to claim I changed methodologies when I didn't, but he would also like to have the opportunity to complain that I paid no attention to the form of the data that was ultimately analyzed. This is a ploy to attack the analysis before he has performed any review of the data or the actual analysis conducted, since no discovery materials have even been produced to date. Dr. Erdem's conclusion in paragraph 6 of his declaration, that this is a "change in methodology" is belied by his own presentation of the same equations and the description in standard economics texts that the logarithm is a change of the scale of a variable to facilitate comparisons along that scale.

11. The more relevant question is why were there changes to the allocations and the data. The answer is simple - after preparation of the August 22nd report, IPG's counsel immediately inquired about the produced results, and during the course of the next week I discovered errors in the earlier processing of the data. Consequently, in the tabulations and analyses I performed for the August 22nd report, inconsistencies existed that called into question the produced results, which required remedy. All of this was in the process of being performed and corrected prior to a pleading filed by the SDC entitled *Notice of Consent of 1999-2009 Satellite Shares Proposed by Independent Producers Group, and Motion for Entry of Distribution Order*. None of my calculations were made in response to such pleading, nor are affected by such pleading. Until earlier this week (and well after the submission of the corrected

analysis) I was not even aware of the pleading filed by the SDC, so I clearly could not have performed an analysis in response to their pleading.

DATED: September 13, 2016

A handwritten signature in cursive script, appearing to read "Charles D. Cowan". The signature is written in dark ink and is positioned above a horizontal line.

By: _____
Dr. Charles Cowan

EXHIBIT C

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of 2004, 2005, 2006, 2007,	)	Docket No. 2012-6 CRB CD 2004-2009
2008 and 2009 Cable Royalty Funds	)	(Phase II) (REMAND)
)	

In the Matter of)	
)	
Distribution of 1999-2009 Satellite	)	Docket No. 2012-7 CRB SD 1999-2009
Royalty Funds	)	(Phase II) (REMAND)
)	

DECLARATION OF DR. CHARLES COWAN

I, CHARLES COWAN, swear under penalty of perjury, that the following is true and correct:

1. I am over twenty-one years of age, am of sound mind and suffer from no legal disabilities. I am fully competent to testify to the matters set forth in this declaration. I have personal knowledge of all the facts stated herein and am in all respects qualified to assert the same. The contents of this declaration are true and correct.

2. On August 22, 2016, I submitted a report in conjunction with the presentation of Independent Producers Group's ("IPG") Written Direct Statement. Therein I submitted a proposed methodology for the distribution of 1999-2009 satellite retransmission royalties, and 2004-2009 cable retransmission royalties.

3. The methodology I used was well explained, and is a methodology that has never been presented to the court, yet which directly responds to the court's desire to base the allocations on the marginal value of programs. This methodology is a standard application of

regression theory, where the coefficients of variables included in the regression are interpreted as the hedonic marginal values of programs offered by each of the parties in this proceeding.

4. After preparation of the August 22nd report, IPG's counsel immediately inquired about the produced results, particularly in the program suppliers category, which appeared uncharacteristically beneficial to IPG. I embarked to look at the issue, and during the course of the next week I discovered errors in the earlier processing of the data. Specifically, I discovered that the earlier processing of the files I had been given regarding the classification of television shows was incomplete and in some cases incorrect, and not all of the program titles that could match had been given the opportunity to be matched to the database of program names and broadcasts. As noted earlier, some of the earlier work done matching the program names was also incorrect. Thus, the database containing matches of broadcasts to program names, needed to indicate which broadcasts should be counted, had to be recreated.

5. An example was the categorization of the SDC program "In Touch with Charles Stanley". This program name had been matched exactly and was categorized as an SDC program (correctly). What was not included in my initial calculations were various other permutations of this title that should have also been considered in the count of programs for the SDC, IPG Devotional, IPG non-devotional, and MPAA. Thus, "Charles Stanley In Touch", "Charles Stanley", "In Touch", and similar permutations and abbreviated names, had been excluded. This happened for each of the MPAA, SDC and IPG claimed programs. Consequently, the SDC had a net increase of 89 program broadcasts in the stations analyzed. While the net difference was not substantial, I was endeavoring to analyze the data as correctly as possible, with all programs and broadcasts properly accounted for. Similarly, there was a substantially larger change in recognized programs and broadcasts for the MPAA and IPG.

6. The only other change to my report was the use of a logarithm in scaling the dependent variable “subscribers”, and considered it to be a revision of no extraordinary significance. As an initial matter, as a mathematician I attempt to use the concise language of that discipline to describe my analysis. A “method” is a procedure used to obtain a specific outcome – thus, “regression” is a method that is used to minimize the distances between the actual observations and the predicted observations that one would obtain by fitting a line through all the observations. It does not change regardless of the type of dependent variable being used. An example is given below in the discussion of Dr. Erdem’s example, where a regression is run twice, using a linear and logarithmic version of the same dependent variable. A logarithm is not a “method” – it is a *scaling* of a variable that is simply a transformation. It is not done to achieve a specific goal, as a method would be – it is just a restatement of the scale of a variable.

7. The “method” I have proposed in order to address the question raised by the court is the regression appearing in my reports. Notwithstanding, both Dr. Erdem and Dr. Gray have stated in submitted declarations that a revision to the *scaling* is a change in method. Dr. Erdem and Dr. Gray are both silent on the known distinction between scaling and method, asserting that a modification to scaling is a change in method. It is not. While such terminology may appear to be quibbling over subjective definitions, the imprecise means by which Dr. Erdem and Dr. Gray refer to scaling as a method is simply inaccurate, and takes liberties with the definitions employed in the field of statistics.

8. The “method” that I proposed in both my initial and subsequent reports, i.e., obtaining the marginal coefficients from the regression, remained unchanged – both reports measure a marginal change in subscribers that are ascribable to the program source. How I

scale the dependent variable is dictated by which scaling leads to the best fit of the data, but is under no circumstances considered a change in "methodology".

9. Nevertheless seeking to find fault in any manner possible, Dr. Erdem ambiguously asserted that I did not use my "intuition for the model" that I presented, or the change of scaling. Initially, I am unclear at which juncture I was obligated to articulate my reasoning. Notwithstanding, even Dr. Erdem points out in the second declaration he filed that there are two obvious reasons to use a logarithm rather than a linear scale. The first is that the fit of the regression to the data available may be better. In the example provided by Dr. Erdem, the logarithm fits the data better than the linear scale and, for example, the amount of variability explained in Dr. Erdem's example improves from 16% to 19%. See *SDC Reply in Support of Motion to Strike Amended Direct Statement of IPG*, Erdem Decl. at pp. 5-6 (Exh.1) (filed Sept. 22, 2016). The second obvious reason for using a logarithmic scale that is demonstrated by Dr. Erdem's example is that it protects the user by giving one an option to better fit the shape of the data and to avoid making unwarranted predictions. For example, in the chart presented as Exhibit 2 to Dr. Erdem's declaration, the linear regression completely misses all the lower values in the chart (which in turn makes the description of the data less viable), as the log regression curves and better fits those observations. *Id.* at p. 5. Consequently, while Dr. Erdem feigns that he is unaware why I would have adjusted the scaling from a linear to a logarithmic relationship between variables, his own example demonstrates the obvious purposes for doing so - - improvement of this particular analysis.

10. If a correction had not been made to the means by which claimed programs were processed, or the use of a logarithmic scale rather than linear scale, Dr. Erdem would instead have complained that I did not consider the distribution of the corrected data being analyzed,

even though Dr. Erdem's second declaration acknowledges that the functional form of a variable included in the analysis is dictated by the data being analyzed. In short, Dr. Erdem would like to claim that different methodologies were presented, when they weren't, but he would also like to have the opportunity to complain that I paid no attention to the form of the data that was ultimately analyzed. I interpret this is a ploy to attack the analysis before he has performed any review of the data or the actual analysis conducted. Dr. Erdem's conclusion in paragraph 6 of his declaration, that this is a "change in methodology" is belied by his own presentation of the same equations and the description in standard economics texts that the logarithm is a change of the scale of a variable to facilitate comparisons along that scale, not a change in "method."

11. Regardless, and as should already be evident from the examples provided by Dr. Erdem (see Exhibit 2 to Erdem Decl. of Sept. 22, 2016), my revision to the allocated percentages was not predominately due to the revised scaling. Rather, it was due to more accurately matching SDC, MPAA, and IPG programs to the compensable programs and broadcasts appearing in the database. I have calculated the differing measures of fit from application of a linear versus a logarithmic scale, and the regression using a logarithmic scaling is an improvement in fit relative to the linear. Any suggestion that my use of a logarithmic scale rather than a linear scale in order to artificially enhance the percentage allocations to IPG is simply fabrication.

12. As a basis of comparison, the following chart compares the amount of variability attributable to moving from linear scaling to logarithmic scaling using the same database after more accurately matching the claimed titles to the compensable programs and broadcasts:

Model Results using August, 30 Report Data Merge

	Sample Size	Number of Years	Number of Call Signs	<u>R² - Log</u>	<u>R² - Linear</u>
Cable	1103	6	493	97.9%	95.4%
Satellite	887	11	308	94.4%	92.1%

To explain, regression is a method to fit a line to a set of observations. The goal or objective in a regression is to fit the line that minimizes the distance between the line and all the actual values. Thus, if I am trying to predict the number of subscribers attributable to different factors, I fit a line that minimizes the distance between the prediction of the number of subscribers and the actual number of subscribers. If there is a perfect prediction, such as knowing a person's weight exactly by knowing their height, then 100% of the variability in weight has been explained just by knowing a person's height. If the prediction tells me nothing about the thing we are predicting, like sun spot activity on Tuesday predicting milk sales on Tuesday, then 0% of the variability is explained.

13. A better prediction means more variability has been explained for the dependent variable "subscribers" in the instance of the results submitted to the Judges. The variability explanation is called R-squared: R-squared is the proportion of variability in the dependent variable that is explained by the prediction.

14. As reflected above, I calculated that for the cable figures a 95% explanation of the variability exists when utilizing a linear scale, while 97% of the variability explanation exists when utilizing a logarithmic scale. For the satellite figures, a 92% explanation of the variability exists when utilizing a linear scale, while 94% of the variability explanation exists when utilizing a logarithmic scale. So, the increase in variance explained for cable is only 2.5%, and the increase in variance explained for satellite is only 2.3%. Consequently, while the logarithmic scaling lets us explain more of the variability, it is not significantly more variability,

demonstrating *mathematically* that my allocated percentage shares to IPG, MPAA, and the SDC, were not significantly affected the use of logarithmic versus linear scaling. That is, most of the change to the allocated percentage shares comes from the correct matching of the shows, not the switch in scaling.

15. Ironically, Dr. Erdem had the data to perform the above calculations at the time that he submitted his September 22 declaration – he could have easily performed both calculations using the regression method and see that this scaling transformation is the correct choice. The “intuition” that Dr. Erdem has criticized that I was lacking makes it very clear to me that the changes are most significantly due to the improved matching of claimed programs to compensable programs and their broadcasts, not a revision to the scaling.

16. I amended my initial report on October 30, 2016, which amended report revised the percentage allocations appearing in my August 22 report. I have been informed that my revised report was submitted as part of IPG’s amended written direct statement, but that such pleading has now been stricken by the CRB Judges on the grounds that, without additional information, the revision to the allocated percentages suggests a change in methodology. As noted, however, I also engaged in a correction of the processing of the data that, by my estimates, was the predominate reason for changes to the allocated percentages.

17. The August 22nd submission included all the descriptions, mathematics, and rationale that was needed by any party to interpret what was being done, and discovery on the initial and subsequent submission would be form wise and substantively identical. The regression method I used in the later calculations is exactly the same. The variables I used are exactly the same. Subscriptions are on the left hand side of the equation, while the number of programs offered by each of the parties are on the right hand side, plus controls for time in years

and for the stations offering the programs. As noted in the appendix to my report, the coefficients in the regression are the percentage change in subscriptions due to a unit change in the number of programs offered by a party in the proceeding. Accordingly, the text of the two reports, dated August 22 and August 30, are identical in terms of explaining that a regression was being used, the same variables included in the regression, and the interpretation of the coefficients. The identical nature of the submitted methodology can be readily evaluated by the court by simply holding up and comparing the two texts.

18. Finally, it bears noting that the revised calculations were in the process of being performed and corrected prior to a pleading filed by the SDC entitled *Notice of Consent of 1999-2009 Satellite Shares Proposed by Independent Producers Group, and Motion for Entry of Distribution Order*. As noted, I began to review my original calculations on August 22, whereas the SDC's *Notice of Consent* was not filed until August 26, 2016. None of my calculations were made in response to such pleading, nor were affected by such pleading. I was not even aware of the pleading filed by the SDC until after my revised calculations were completed and submitted to the Judges on August 30, 2016, so I clearly could not have performed an analysis in response to the SDC's pleading.

DATED: October 17, 2016

A handwritten signature in black ink, appearing to read "Charles D. Cowan". The signature is fluid and cursive, with the first name "Charles" and last name "Cowan" being more legible than the middle initial "D".

By: _____
Dr. Charles Cowan

EXHIBIT D

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of 2004, 2005, 2006,	)	Docket No. 2012-6 CRB CD 2004-
2007, 2008 and 2009 Cable	)	2009 (Phase II)
Royalty Funds)	
 In the Matter of)	
)	
Distribution of 1999-2009 Satellite	)	Docket No. 2012-7 CRB SD 1999-
Royalty Funds	)	2009 (Phase II)
)	

**DECLARATION OF DENISE VERNON IN SUPPORT OF INDEPENDENT
PRODUCERS GROUP'S OPPOSITION TO SETTLING DEVOTIONAL
CLAIMANTS' MOTION TO COMPEL INDEPENDENT PRODUCERS
GROUP TO PRODUCE DOCUMENTS**

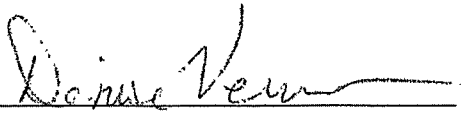
I, DENISE VERNON, declare and state as follows:

1. I became a member of Worldwide Subsidy Group, LLC dba Independent Producers Group ("IPG") in March of 2005. The following facts are within my personal knowledge, and if called upon I could and would testify competently thereto.
2. In November 2011, I became the majority owner of IPG, capable of unilaterally controlling its activities.

3. In 2008 Raul Galaz began working as an employee for WSG. In 2013, Raul Galaz ceased to be an employee of IPG, but continued to perform services for IPG as a consultant, and in that role Mr. Galaz has had the full authority to act on behalf of IPG in the prosecution of the above titled proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of October, 2016.

A handwritten signature in cursive script, reading "Denise Vernon", is written over a horizontal line.

Denise Vernon

EXHIBIT E

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

In the Matter of)	
)	
Distribution of 2004, 2005, 2006, 2007,	)	Docket No. 2012-6 CRB CD 2004-2009
2008 and 2009 Cable Royalty Funds	)	(Phase II) (REMAND)
)	
 In the Matter of)	
)	
Distribution of 1999-2009 Satellite	)	Docket No. 2012-7 CRB SD 1999-2009
Royalty Funds	)	(Phase II) (REMAND)
)	

AFFIDAVIT OF DR. CHARLES COWAN

I, Charles Cowan, swear under penalty of perjury, that the following is true and correct:

1. I am over twenty-one years of age, am of sound mind and suffer from no legal disabilities. I am fully competent to testify to the matters set forth in this declaration. I have personal knowledge of all the facts stated herein and am in all respects qualified to assert the same. The contents of this declaration are true and correct.

2. On August 30, 2016, I submitted an amended version of a report I had prepared in connection with the above proceedings. Thereafter, I was asked to provide the backup materials on which I relied in order to create the amended report, and such materials were produced in discovery. In subsequent communications received from opposing counsel following the production of back up materials, a discrepancy between the backup materials and the reported results were noted and questioned.

3. At that time, both I and members of my company reviewed the materials in order to determine if a discrepancy existed and, if so, the explanation for the discrepancy. Almost immediately, it was determined that I erroneously included two tables in the body of the report that were incorrect. These tables, tables 2 and 4 to my amended report, both pertain to the Satellite estimates. After substantial investigation, it was determined that these two tables were taken from an earlier analysis of an incomplete data file, and needed to be replaced. In fact, the backup materials I provided in discovery reflect the correct satellite figures.

4. Both corrected tables are provided below. While the changes from the reported tables to the corrected tables are nominal, it is still my responsibility to ensure that the proper data is provided in this case. The error is my fault - I apologize to all parties concerned.

Table 2: Relative Split in Number of Subscribers - Satellite Devotional - Between IPG Programs and SDC Programs Holding Constant Year and Station (Call Sign)

Year	IPG	SDC
1999	1.11%	98.89%
2000	0.00%	100.00%
2001	8.78%	91.22%
2002	11.23%	88.77%
2003	10.39%	89.61%
2004	10.73%	89.27%
2005	20.16%	79.84%
2006	36.60%	63.40%
2007	27.52%	72.48%
2008	0.00%	100.00%
2009	26.25%	73.75%

Table 4: Relative Split in Number of Subscribers - Satellite Suppliers - Between IPG Program Supplier Programs and MPAA Programs Holding Constant Year and Station

Year	IPG PS	MPAA
2000	11.14%	88.86%
2001	9.79%	90.21%
2002	8.81%	91.19%

2003	7.08%	92.92%
2004	5.77%	94.23%
2005	7.09%	92.91%
2006	10.64%	89.36%
2007	12.47%	87.53%
2008	8.08%	91.92%
2009	6.69%	93.31%

DATED: October 2, 2016

Cowan

By: *Dr. Charles Cowan*

Dr. Charles Cowan



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Product & Tracking Information

Postal Product:	Features:	PO to Addressee
Priority Mail Express 1-Day™	Insured Up to \$100 insurance included Restrictions Apply	
October 22, 2016, 12:18 pm	Delivered, PO Box	WASHINGTON, DC 20024
October 22, 2016, 10:46 am	Business Closed	WASHINGTON, DC 20024
October 22, 2016, 10:27 am	Available at PO Box	WASHINGTON, DC 20024
October 22, 2016, 10:17 am	Sorting Complete	WASHINGTON, DC 20024
October 22, 2016, 9:57 am	Arrived at Post Office	WASHINGTON, DC 20024
October 22, 2016, 8:07 am	Arrived at USPS Destination Facility	WASHINGTON, DC 20074
October 21, 2016, 9:10 pm	Departed USPS Facility	LOS ANGELES, CA 90009
October 21, 2016, 5:48 pm	Arrived at USPS Origin Facility	LOS ANGELES, CA 90009
October 21, 2016, 2:29 pm	Acceptance	LOS ANGELES, CA 90024

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